

**REMARKS**

**Summary Of The Office Action & Formalities**

**Status of Claims**

Claims 1-13 are all the claims pending in the application. By this Amendment, Applicant is canceling claims 3 and 11-13, amending claims 1, 2 and 4-10 and adding new claims 14-23. No new matter is added.

**Claim to Foreign Priority**

Applicant thanks the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copies of the priority documents were received.

**Information Disclosure Statement**

Applicant also thanks the Examiner for initialing the references listed on form PTO/SB/08 submitted with the Information Disclosure Statement filed on February 22, 2005.

**Claim Rejections - § 112**

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite because in claim 3, “HS2” and “HI2” lack antecedent basis. (Page 2 of the Office Action.)

Applicant is amending the claim to overcome this rejection.

**Art Rejections**

1. Claims 1, 4 and 9-12 are rejected under 35 U.S.C. § 102(e) as being anticipated by de Pous et al. (US 6,799,690).
2. Claim 2 is rejected under 35 U.S.C. § 102(b) as being anticipated by Schultz (US 6,170,713).

3. Claims 3, 5-8 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over de Pous et al. (US 6,799,690).

Applicant respectfully traverses.

**Claim Rejections - 35 U.S.C. § 102**

1. Claims 1, 4 And 9-12 In View Of de Pous et al. (US 6,799,690).

In rejecting claims 1, 4 and 9-12 in view of de Pous et al. (US 6,799,690), the grounds of rejection state:

De Pous et al. disclose, in figs.1 and 2, a fluid dispenser member comprising a body 21 defining a chamber; an actuator rod 22; a periphery bearing collar 106, a neck gasket 3; the axial height between the bottom face of the collar and the top end of the rod is substantially equal to the axial height between the bottom face of the collar and the bottom end of the body.

Office Action at pages 2-3. Applicant respectfully disagrees.

The grounds of rejection allege, without pointing to any actual disclosure, that de Pous et al. discloses the claimed relative heights recited in claim 1. That is not, in fact the case. Moreover, it is improper to rely on the patent drawings in de Pous et al. for such disclosures. Indeed, it is well settled that “arguments based on drawings not *explicitly* made to scale in issued patents are unavailing.” *Nystrom v. Trex Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005) (emphasis added). “Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value.” *In re Wright*, 569 F.2d 1124, 1127 (C.C.P.A. 1977).

In addition, claim 1 now recites the feature of claim 13, which specifies certain dimensions of the neck. In the rejection of claim 13, the Examiner argues that such limitations would have been obvious “since it has been held that where the general conditions of a claim are

disclosed in the prior art, discovering of the optimum or workable ranges involves only routine skill in the art.” Applicant disagrees.

In fact, the prior art does not disclose any “general conditions” for the claimed measurements. Moreover, a particular parameter must *first* be recognized as a result-effective variable, *i.e.*, a variable that achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *See In re Antonie*, 559 F.2d 618 and MPEP Section 2144.05.

Accordingly, the Examiner is kindly requested to reconsider and withdraw the foregoing rejection.

2. Claim 2 In View Of Schultz (US 6,170,713).

In rejecting claim 2 in view of Schultz (US 6,170,713), the grounds of rejection state:

Schultz discloses, in fig. 1, a fluid dispenser member comprising a body 3 defining a chamber; an actuator rod 8; a periphery bearing collar 7, a neck gasket 16; the axial height between the bottom face of the gasket and the top end of the rod is substantially equal to the axial height between the bottom face of the gasket and the bottom end of the body.

Office Action at page 3. Applicant respectfully disagrees.

As with de Pous et al., Schultz provides no indication that the drawings are to scale and, therefore, cannot properly be relied upon for the claimed axial heights. Further, as with claim 1, claim 2 has includes the features of claim 13. Neither Schultz nor de Pous et al. discloses a particular parameter as being recognized as a result-effective variable that would have led one skilled in the art to the determination of the optimum or workable ranges through routine experimentation so as to lead one to the claimed invention. *See In re Antonie*, 559 F.2d 618 and MPEP Section 2144.05.

Accordingly, the Examiner is kindly requested to reconsider and withdraw the rejection of claim 2.

**Claim Rejections - 35 U.S.C. § 103**

1. Claims 3, 5-8 And 13 Over de Pous et al. (US 6,799,690).

In rejecting claims 3, 5-8 and 13 over de Pous et al. (US 6,799,690), the grounds of rejection state:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the height and diameter of claimed components of the fluid dispenser member of de Pous et al. as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering of the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Office Action at page 3.

As discussed above, de Pous et al. does not disclose any “general conditions” for the claimed features. Nor is there a disclosure of a particular parameter as being recognized as a result-effective variable that would have led one skilled in the art to the determination of the optimum or workable ranges through routine experimentation. See *In re Antonie*, 559 F.2d 618 and MPEP Section 2144.05.

Accordingly, the Examiner is kindly requested to reconsider and withdraw this rejection as well.

**New Claims**

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 14-23.

Applicant notes that support for claims 22 and 23 can be found, *inter alia*, on page 8 of the specification. Clearly, none of the cited art teaches or suggests the additional features recited in claims 22.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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